

## REMARKS

In the Office Action of January 24, 2006, claims 1-12, 14-23, 26-39 and 42-85 were rejected under 35 U.S.C. 102(e) as anticipated by Qin et al. (U.S. Patent No. 6,469,130). This ground of rejection is respectfully traversed.

The present invention is directed to absorbent articles comprising a topsheet, a backsheet and an absorbent core disposed between the backsheet and topsheet. The absorbent core comprises a superabsorbent polymer having particularly defined features for improved performance. The superabsorbent polymer of this invention should have the following physical characteristics: an AUL value of less than about 25 g/g at 0.3 psi, and a Gel Integrity Index (GII) of less than about 500 kg mm. These parameters, together, serve to distinguish the superabsorbent polymers which are suitable for use in this invention from the myriad number of such products on the market (see pages 9 and 10 of the specification for a list of typical products).

Applicants have discovered that the gel properties of superabsorbent polymers affect the performance of the polymer, such as its loading characteristics, and that such properties in turn can be measured by the Gel Integrity Index. Specifically, applicants have discovered that absorbent cores comprising a superabsorbent polymer having a GII of less than about 500 kg mm have unexpectedly superior absorbency.

The Examiner states that the superabsorbent polymers described in Qin et al. meet the absorbency requirements of the present invention based on the swelling properties of the described polymers. Accordingly, the Examiner concludes that the polymers of Qin inherently possess the claimed Gel Integrity Index.

There is clearly no disclosure in the reference regarding the evaluation of polymers using the Gel Integrity Index as described in the present application, and the Examiner has conceded as much. The mere statement in the reference that polymer fibers can be used to prepare a water swellable but insoluble web does not constitute a recognition that such fibers have a Gel Integrity Index of any particular value. One skilled in the art would have to evaluate the fibers on a case-by-case basis in order to make such a determination, with no reasonable expectation of success. This is not the proper legal criteria to use in making a rejection under either 35 U.S.C. 102 or 103.

The Examiner contends that the polymers of Qin inherently possesses the GII values of the present invention, and that applicant must establish that the superabsorbent polymers of the reference do not possess such values. Applicants respond that it is the Examiner's burden to establish "a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied prior art". See MPEP 2112, and Ex parte Levy, 17 USPQ2d 1461, 14654 (BPAI 1990).

Turning to the present application and the applied reference, applicants submit that the Examiner has not carried the burden of showing that the superabsorbent polymers disclosed in the reference would necessarily be encompassed by the present claims. At most, the Examiner has shown that both the reference and the present invention disclose polymers which share some physical characteristics. However, this is a far cry from showing that the polymers of the reference **necessarily** have GII values of less than about 500 kg mm as required in the present claims. Applicants maintain that they do not have the burden of showing that the polymers described in Qin **do not** fall within the scope of the present claims, since this burden properly falls on the USPTO.

The Examiner further states that applicants specification provides the necessary guidance for determining whether a selected superabsorbent polymer satisfies the criteria of applicants invention. However, applicants submit that the use of hindsight to reconstruct the invention based on their own disclosure can never be a proper basis for rejecting their own claims.

Claims 13-14, 24-25 and 40-41 have been rejected under 35 U.S.C. 103(a) as obvious over Qin et al. in view of Roberts et al. (U.S. Patent No. 3,875,942). This ground of rejection is traversed.

Roberts et al. has been cited as teaching that it would be obvious to use a medicament in the absorbent core of an absorbent article. Applicants respond that the use of a medicament is only one feature of the invention, and Roberts is completely silent on the use of a Gel Integrity Index to select superabsorbent polymers having optimal absorbency. In this regard, Roberts fails to remedy the shortcomings of the Qin reference as discussed above.

In view of the aforementioned facts and reasons, the present application is now believed to overcome the remaining rejections in this application, and to be in proper condition for allowance. Entry of the foregoing amendment at this time is deemed appropriate since no further review or search is required. Accordingly, reconsideration and withdrawal of the rejections, is respectfully solicited. The Examiner is invited to contact the undersigned at the telephone number listed below to discuss any matter pertaining to the status of this application.

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Respectfully submitted,

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